

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| AN INDUSTRIAL POWER AGREEMENT |) | |
| FILING BETWEEN SHELBY RURAL |) | |
| ELECTRIC COOPERATIVE CORPORATION |) | CASE NO. 90-407 |
| AND THE BEKAERT CORPORATION |) | |

O R D E R

On November 15, 1990, Shelby Rural Electric Cooperative Corporation ("Shelby") filed for Commission approval an Industrial Power Agreement ("Agreement") with the Bekaert Corporation ("Bekaert"). The Agreement, which was executed on October 12, 1990, has an effective date of October 1, 1990 and a minimum term of five years from the effective date. Section 12 of the Agreement states that there will be no contract between Shelby and Bekaert unless all necessary approvals, including Commission approval, are obtained within 180 days of the Agreement's execution.

By Order dated January 18, 1991, the Commission granted interim approval of Shelby's request to serve Bekaert under its Rate Schedule B1, at a minimum contract demand of 1,000 KW, during the pendency of this case. As part of that same Order, the Commission directed Shelby to provide additional information regarding the projected Bekaert loads, the attendant substation and transmission facilities, and the contract provisions regarding

a potential default by Bekaert. Shelby's responses were filed on January 30, 1991.

The Agreement sets forth the terms and conditions of Shelby's service to Bekaert, including, among other things, the minimum contract demands at which Bekaert will be billed under Shelby's Rate Schedules B1 and B2, the conditions under which those minimum demands may change, and the upper limits on Bekaert's actual demand. The Agreement, Section 13, designates East Kentucky Power Cooperative, Inc. ("East Kentucky"), Shelby's wholesale power supplier, as a third-party beneficiary due to its investment of approximately \$500,000 in substation and transmission facilities specifically constructed to serve Bekaert. Section 13 further provides East Kentucky the right to bring a cause of action to recover its investment in the event of Bekaert's default under the Agreement.

The Commission's Order of January 18, 1991 raised the issue of Bekaert's reimbursement of East Kentucky's investment in the event that Bekaert's load does not increase to a level which necessitates the additional substation capacity. Shelby responded that the provisions of the Agreement which require Bekaert's minimum contract demand to increase to 3,000 KW within 12 months of completion of the substation facilities serve as a guarantee of said reimbursement; that with Bekaert paying rates at the minimum 3,000 KW demand for a period in excess of three years, the minimum revenues generated under the Agreement will adequately provide recovery in East Kentucky's investment.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Agreement does not adequately provide for East Kentucky's reimbursement in the event of a default by Bekaert. Section 13 only provides a means by which East Kentucky may seek recovery in a case of default; as such, it does not eliminate the risk that East Kentucky's investment to serve Bekaert might eventually have to be borne by customers other than Bekaert. Given the magnitude of East Kentucky's investment, it is incumbent upon the Commission to ensure that neither East Kentucky nor its ratepayers be at risk for its investment to serve Bekaert. Therefore, a letter of credit, surety bond, or similar financial guarantee must be provided by Bekaert before the Agreement can be approved. In all other respects, the Agreement is acceptable.

IT IS THEREFORE ORDERED that Shelby's Agreement with Bekaert be and it hereby is denied. Approval will be granted upon the filing of an executed Agreement, substantially similar to the one filed November 15, 1990, but modified to include a letter of credit, surety bond, or similar financial guarantee by Bekaert for reimbursement of East Kentucky's investment in facilities to serve Bekaert.

Done at Frankfort, Kentucky, this 14th day of March, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director